

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 26, 2007

Charles R. Fulbruge III
Clerk

No. 05-41866
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GABRIEL MARTINEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:02-CR-804-2

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Gabriel Martinez appeals the sentence imposed following his guilty-plea conviction for conspiracy to engage in unlawful racketeering conduct in relation to a Racketeer Influenced and Corrupt Organization (RICO) and conspiracy to receive firearms after having previously been convicted of a felony. Martinez argues that the Government breached the plea agreement by failing to recommend a 140-month sentence, as it had promised in the plea agreement.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The record establishes, and the Government concedes, that it breached the plea agreement. Martinez's sentence is vacated and the case is remanded for resentencing before a different district court judge. See *United States v. Saling*, 205 F.3d 764, 768 (5th Cir. 2000).

SENTENCE VACATED; CASE REMANDED FOR RESENTENCING